

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.170 OF 2007

Hanmant Anandrao Deshmukh(deceased)
by L.Rs. ..Appellants.

V/s.

Shankar Rajaram Deshmukh & Ors. ..Respondents.

Mr.P.B.Shah for appellants.

CORAM: A.M.KHANWILKAR, J

DATE : JULY 9, 2007.

P.C. :

1. Heard counsel for the appellants.

2. The argument of the appellants that inspite of the pendency of the appeal preferred by the appellants against the decree passed by the trial Court in the suit preferred by the appellants for partition of the self-same property being joint family property, the lower Appellate Court has hastened the matter by finally disposing of the appeal filed by the appellants in relation to the decree passed by the Civil Court in the suit filed by the respondent/plaintiff for possession of the suit property, wherein the status of the appellants were asserted and found to be only as a licensee.

3. It is not in dispute that the suit preferred by the appellants for declaration that the suit property is joint family property and for partition thereof, came to be dismissed as back as on 3rd December, 2000. The appellants did not file appeal against said decree, however, chose to institute such appeal accompanied by application for condonation of delay against the decree dated 3rd December, 2000 only on 14th September, 2006. Obviously that appeal has been lodged with a view to interdict the process of appeal filed by the appellants questioning the decree of possession passed in the suit filed by the respondent who have been found to be the owners thereof. The appeal preferred by the appellants indeed has been decided on 2nd January, 2007. The Judgment of the appellate Court is well reasoned judgment. Mere fact that the some appeal has been filed by the appellants will be of no avail to the appellants. The argument that the appellants have filed appeal questioning decree of dismissing the suit preferred by the appellants for partition will be of no avail to the appellants as the said appeal is obviously after thought or counterblast with a view to protract the daction instituted by the Respondent. No interference is warranted in the present appeal. Hence dismissed.